

## Commodity Credit Corporation, USDA

## § 1499.8

assistance regarding sales of commodities provided by CCC.

(c) CCC will not pay any costs incurred by the Cooperating Sponsor prior to the date of the Program Agreement.

(d) Except as provided in paragraph (b) of this section, the Cooperating Sponsor shall ordinarily bear all costs incurred subsequent to CCC's delivery of commodities at U.S. ports or intermodal points.

(e) A Cooperating Sponsor seeking agreement by CCC to bear the costs identified in paragraphs (b)(2) or (b)(3) of this section shall submit to the Director, PDD, a Program Operation Budget detailing such costs. If approved, the Program Operation Budget shall become part of the Program Agreement. The Cooperating Sponsor may make adjustments between line items of an approved Program Operation Budget up to 20 percent of the total amount approved or \$1,000, whichever is less, without any further approval. Adjustments beyond these limits must be specifically approved by the Controller and the General Sales Manager.

(f) The Cooperating Sponsor may request advance of up to 85 percent of the amount of an approved Program Operating Budget. However, CCC will not approve any request for an advance received earlier than 60 days after the date of a previous advance made in connection with the same Program Agreement.

(g) Funds advanced shall be deposited in an interest bearing account until expended. Interest earned may be used only for the purposes for which the funds were advanced.

(h) The Cooperating Sponsor shall return to CCC any funds not obligated as of the 180th day after being advanced, together with any interest earned on such unexpended funds. Funds and interest shall be returned within 30 days of such date.

(i) The Cooperating Sponsor shall, not later than 10 days after the end of each calendar quarter, submit a financial statement to the Director, CCCPSD, accounting for all funds advanced and all interest earned.

(j) CCC will pay all other costs for which it is obligated under the Pro-

gram Agreement by reimbursement. However, CCC will not pay any cost incurred after the final date specified in the Program Agreement.

### § 1499.8 Ocean transportation.

(a) *Cargo preference.* Shipments of commodities provided under either the section 416(b) or Food for Progress programs are subject to the requirements of sections 901(b) and 901b of the Merchant Marine Act, 1936, regarding carriage on U.S.-flag vessels. CCC will endeavor to meet these requirements separately for each program for each 12-month compliance period. A Cooperating Sponsor shall comply with the instructions of CCC regarding the quantity of commodities that must be carried on U.S. flag vessels.

(b) *Freight procurement requirements.* In all cases where the Cooperating Sponsor arranges ocean transportation, whether by U.S. or non-U.S. flag vessel and CCC is financing any portion of the ocean freight:

(1) The Cooperating Sponsor shall arrange ocean transportation through competitive bidding and shall obtain approval of all invitations for bids from the offices specified in the Program Agreement prior to issuance.

(2) Invitations for bids shall be issued through the Transportation News Ticker (TNT), New York, and at least one other comparable means of trade communication.

(3) Freight invitations for bids shall include specified procedures for payment of freight, including the party responsible for the freight payments, and expressly require that:

(i) Offers include a contract canceling date no later than the last contract layday specified in the invitation for bids;

(ii) Offered rates be quoted in U.S. dollars per metric ton;

(iii) If destination bagging or transportation to a point beyond the discharge port is required, the offer separately state the total rate and the portion thereof attributable to the ocean segment of the movement;

(iv) Any non-liner U.S. flag vessel 15 years or older offer, in addition to any other offered rate, a one-way rate applicable in the event the vessel is scrapped or transferred to foreign flag

registry prior to the end of the return voyage to the United States;

(v) In the case of packaged commodities, U.S. flag carriers specify whether delivery will be direct breakbulk shipment, container shipment, or breakbulk transshipment and identify whether transshipment (including container relays) will be via U.S. or foreign flag vessel;

(vi) Vessels offered subject to Maritime Administration approval will not be accepted; and

(vii) Offers be received by a specified closing time, which must be the same for both U.S. and non-U.S. flag vessels.

(4) In the case of shipments of bulk commodities and non-liner shipments of packaged commodities, the Cooperating Sponsor shall open offers in public in the United States at the time and place specified in the invitation for bids and consider only offers that are responsive to the invitation for bids without negotiation, clarification, or submission of additional information. Late offers shall not be considered or accepted.

(5) All responsive offers received for both U.S. flag and foreign flag service shall be presented to KCCO which will determine the extent to which U.S.-flag vessels will be used.

(6) The Cooperating Sponsor shall promptly furnish the Director, Public Law 480-OD, or other official specified in the Program Agreement, copies of all offers received with the time of receipt indicated thereon. The Director, Public Law 480-OD, or other official specified in the Program Agreement, will approve all vessel fixtures. The Cooperating Sponsor may fix vessels subject to the required approval; however, the Cooperating Sponsor shall not confirm a vessel fixture until advised of the required approval and the results of the Maritime Administration's guideline rate review. The Cooperating Sponsor shall not request guideline rate advice from the Maritime Administration. The Cooperating Sponsor will, promptly after receipt of vessel approval, issue a public notice of the fixture details on the TNT or other means of communication approved by the Director, Public Law 480-OD.

(7) Non-Vessel Operating Common Carriers may not be employed to carry

shipments on either U.S. or foreign-flag vessels.

(8) The Cooperating Sponsor shall promptly furnish the Director Public Law 480-OD, a copy of the signed laytime statement and statement of facts at the discharge port.

(c) *Shipping agents.* (1) The Cooperating Sponsor may appoint a shipping agent to assist in the procurement of ocean transportation. The Cooperating Sponsor shall nominate the shipping agent in writing to the Deputy Administrator, Room 4077-S, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250-1031, and include a copy of the proposed agency agreement. The Cooperating Sponsor shall specify the time period of the nomination.

(2) The shipping agent so nominated shall submit the information and certifications required by 7 CFR 17.5 to the Deputy Administrator.

(3) A person may not act as a shipping agent for a Cooperating Sponsor unless the Deputy Administrator has notified the Cooperating Sponsor in writing that the nomination is accepted.

(d) *Commissions.* (1) When any portion of the ocean freight is paid by CCC, total commissions earned on U.S. and foreign flag bookings by all parties arranging vessel fixtures, shall not exceed 2½ percent of the total freight costs.

(2) Address commissions are prohibited.

(e) *Contract terms.* When CCC is paying any portion of the ocean freight, charter parties and liner booking contracts must conform to the following requirements, as applicable:

(1) Packaged commodities on liner vessels shall be shipped on the basis of full berth terms with no demurrage or despatch;

(2) Shipments of bulk liquid commodities may be contracted in accordance with trade custom. Other bulk commodities, including shipments that require bagging or stacking for the account of the vessel, shall be shipped on the basis of vessel load, free out, with demurrage and despatch applicable at load and discharge ports; except that, if bulk commodities require further inland distribution, they shall be shipped

on the basis of vessel load with demurrage and despatch at load and berth terms discharge, *i.e.*, no demurrage, despatch, or detention at discharge. Demurrage and despatch shall be settled between the ocean carrier and commodity suppliers at load port and between the ocean carrier and charterers at discharge ports. CCC is not responsible for resolving disputes involving the calculation of laytime or the payment of demurrage or despatch.

(3) If the Program Agreement requires the Cooperating Sponsor to arrange an irrevocable letter of credit for ocean freight, the Cooperating Sponsor shall be liable for detention of the vessel for loading delays attributable solely to the decision of the ocean carrier not to commence loading because of the failure of the Cooperating Sponsor to establish such letter of credit. Charter parties and liner booking contracts may not contain a specified detention rate. The ocean carrier shall be entitled to reimbursement, as damages for detention for all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the charter party or liner booking contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable charter party or liner booking contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(4) Charges including, but not limited to charges for inspection, fumigation, and carrying charges, attributable to the failure of the vessel to present before the canceling date will be for the account of the ocean carrier.

(5) Ocean freight is earned under a charter party when the vessel and cargo arrive at the first port of discharge, *Provided*, That if a *force majeure*

prevents the vessel's arrival at the first port of discharge, 100% of the ocean freight is payable or, if the charter party provides for completing additional requirements after discharge such as bagging, stacking, or inland transportation, not more than 85% of the ocean freight is payable, at the time the General Sales Manager determines that such *force majeure* was the cause of nonarrival; and

(6) When the ocean carrier offers delivery to destination ports on U.S.-flag vessels, but foreign-flag vessels are used for any part of the voyage to the destination port without first obtaining the approval of the Cooperating Sponsor, KCCO, and any other approval that may be required by the Program Agreement, the ocean freight rate will be reduced to the lowest responsive foreign-flag vessel rate offered in response to the same invitation for bids and the carrier agrees to pay CCC the difference between the contracted ocean freight rate and the freight rate offered by such foreign-flag vessel.

(f) *Coordination between CCC and the Cooperating Sponsor.* When a Program Agreement specifies that the Cooperating Sponsor will arrange ocean transportation:

(1) KCCO will furnish the Cooperating Sponsor, or its agent, with a Notice of Commodity Availability (Form CCC-512) which will specify the receiving country, commodity, quantity, and date at U.S. port or intermodal delivery point.

(2) The Cooperating Sponsor shall complete the Form CCC-512 indicating name of steamship company, vessel name, vessel flag and estimated time of arrival at U.S. port; and shall sign and return the completed form to KCCO, with a copy to the Director, P.L. 480-OD. If CCC agrees to pay any part of the ocean transportation for liner cargoes, the Cooperating Sponsor shall also indicate on the Form CCC-512 the applicable Federal Maritime Commission tariff rate, and tariff identification.

(3) KCCO will issue instructions to have the commodity delivered f.a.s. or f.o.b. vessel, U.S. port of export or intermodal delivery point, consigned to the Cooperating Sponsor.

(g) Documents required for payment of freight—(1) General rule. To receive payment for ocean freight, the following documents shall be submitted to the Director, CCCPSD:

(i) One copy of completed Form CCC-512;

(ii) Four copies of the original on-board bills of lading indicating the freight rate and signed by the originating carrier;

(iii) For all non-containerized grain cargoes,

(A) One copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(B) One copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and

(C) One copy of the National Cargo Bureau Certificate of Loading;

(iv) For all containerized grain and grain product cargoes, one copy of the FGIS Container Condition Inspection Certificate;

(v) One signed copy of liner booking note or charter party covering ocean transportation of cargo;

(vi) For charter shipments, a notice of arrival at first discharge port submitted by the Cooperating Sponsor;

(vii) Four copies of either:

(A) A request by the Cooperating Sponsor for reimbursement of ocean freight or ocean freight differential indicating the amount due, and accompanied by a certification from the ocean carrier that payment has been received from the Cooperating Sponsor; or

(B) A request for direct payment to the ocean carrier, indicating amount due; or

(C) A request for direct payment of ocean freight differential to the ocean carrier accompanied by a certification from the carrier that payment of the Cooperating Sponsor's portion of the ocean freight has been received.

(2) *In cases of force majeure.* To receive payment in cases where the General Sales Manager determines that circumstances of *force majeure* have prevented the vessel's arrival at the first port of discharge, the Cooperating Sponsor shall submit all documents required by paragraph (g)(1) of this section except for the notice of arrival re-

quired by paragraph (g)(1)(vi) of this section.

(h) *CCC payment of ocean freight or ocean freight differential—(1) General rule.* CCC will pay, not later than 30 days after receipt in good order of the required documentation, 100 percent of either the ocean freight or the ocean freight differential, whichever is specified in the Program Agreement.

(2) *Additional requirements after discharge.* Where the charter party or liner booking note provide for the completion of additional services after discharge, such as bagging, stacking or inland transportation, CCC will pay, not later than 30 days after receipt in good order of the required documentation, either not more than 85 percent of the total freight charges or 100 percent of the ocean freight differential, whichever is specified in the Program Agreement. CCC will pay the remaining balance, if any, of the freight charges not later than 30 days after receipt of notification from the Cooperating Sponsor that such additional services have been provided; except that CCC will not pay any remaining balance where the GSM determines that the vessel's arrival at first port of discharge was prevented by *force majeure*.

(3) *No demurrage.* CCC will not pay demurrage. *§1499.9 Arrangements for entry and handling in the foreign country.*

(a) The Cooperating Sponsor shall make all necessary arrangements for receiving the commodities in the recipient country, including obtaining appropriate approvals for entry and transit. The Cooperating Sponsor shall store and maintain the commodities from time of delivery at port of entry or point of receipt from originating carrier in good condition until their distribution, sale or barter.

(b) When CCC has agreed to pay costs of transporting, storing, and distributing commodities from designated points of entry or ports of entry, the Cooperating Sponsor shall arrange for such services, by through bill of lading, or by contracting directly with suppliers of services, as CCC may approve. If the Cooperating Sponsor contracts directly with the suppliers of such services, the Cooperating Sponsor may seek reimbursement by submitting

documentation to CCC indicating actual costs incurred. All supporting documentation must be sent to the Director, CCCPSD. CCC, at its option, will reimburse the Cooperating Sponsor for the cost of such services in U.S. dollars at the exchange rate in effect on the date of payment by CCC, or in foreign currency.

**§ 1499.10 Restrictions on commodity use and distribution.**

(a) The Cooperating Sponsor may use the commodities provided only in accordance with the terms of the Program Agreement.

(b) Commodities shall not be distributed within the importing country on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliations of the potential consumers or recipients.

(c) Commodities shall not be distributed, handled or allocated by military forces without specific CCC authorization.

**§ 1499.11 Agreement between cooperating sponsor and recipient agencies.**

(a) The Cooperating Sponsor shall enter into a written agreement with a recipient agency prior to the transfer of any commodities, sale proceeds or program income to the recipient agency. Copies of such agreements shall be provided to the Agricultural Counselor or Attache, and the Director, PDD. Such agreements shall require the recipient agency to pay the Cooperating Sponsor the value of any commodities, sale proceeds or program income that are used for purposes not expressly permitted under the Program Agreement, or that are lost, damaged, or misused as result of the recipient agency's failure to exercise reasonable care;

(b) CCC may waive the requirements of paragraph (a) of this section where it determines that such an agreement is not feasible or appropriate.

**§ 1499.12 Sales and barter of commodities provided and use of proceeds.**

(a) Commodities may be sold or bartered without the prior approval of CCC where damage has rendered the commodities unfit for intended pro-

gram purposes and sale or barter is necessary to mitigate loss of value.

(b) A Cooperating Sponsor may, but is not required to, negotiate an agreement with the host government under which the commodities imported for a sale or barter may be imported, sold, or bartered without assessment of duties or taxes. In such cases and where the commodities are sold, they shall be sold at prices reflecting prevailing local market value.

(c) The Cooperating Sponsor shall deposit all sale proceeds into an interest-bearing account unless prohibited by the laws or customs of the importing country or CCC determines that to do so would constitute an undue burden. Interest earned on such deposits shall only be used for approved activities.

(d) Except as otherwise provided in this part the Cooperating Sponsor may use sale proceeds and resulting interest only for those purposes approved in the applicable Plan of Operation.

(e) CCC will approve the use of sale proceeds and interest to purchase real and personal property where local law permits the Cooperating Sponsor to retain title to such property, but will not approve the use of sale proceeds or interest to pay for the acquisition, development, construction, alteration or upgrade of real property that is;

(1) Owned or managed by a church or other organization engaged exclusively in religious activity, or

(2) Used in whole or in part for sectarian purposes; *except that*, a Cooperating Sponsor may use such sale proceeds or interest to pay for repairs or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of provided commodities but only if such structure is not used in whole or in part for any religious or sectarian purposes while the provided commodities are stored in such structure. When not approved in the Plan of Operation, such use may be approved by the Agricultural Counsellor or Attache.

(f) The Cooperating Sponsor shall follow commercially reasonable practices in procuring goods and services and when engaging in construction activity in accordance with the approved Plan of Operation. Such practices shall include procedures to prevent fraud, self-